

AMENDED IN SENATE JANUARY 21, 2014

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 794

Introduced by Senator Evans

February 22, 2013

An act to amend, *repeal, and add* Section 231 of the Code of Civil Procedure, relating to juries.

LEGISLATIVE COUNSEL'S DIGEST

SB 794, as amended, Evans. Juries: criminal trials: peremptory challenges.

Existing law provides that in a criminal case, if the offense charged is punishable with a maximum term of imprisonment of 90 days or less, the defendant and the state are each entitled to 6 peremptory challenges of prospective jurors. Existing law also provides that when 2 or more defendants are jointly tried, their challenges are to be exercised jointly, but each defendant is also entitled to 4 additional challenges which may be exercised separately, and the state is entitled to the same number of additional challenges.

This bill would, *until January 1, 2017*, recast these provisions to apply to a criminal case in which the offense charged is punishable with a maximum term of imprisonment for one year or less. The bill would provide that in that instance the defendant and the state would each be allowed 5 peremptory challenges of prospective jurors. The bill would, *until January 1, 2017*, provide that if 2 or more defendants are jointly tried for an offense punishable with a maximum term of one year or less, their challenges would be exercised jointly, but each defendant would also be entitled to 2 additional challenges which may be exercised separately, and the state would also be entitled to 2 additional challenges.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 231 of the Code of Civil Procedure is
2 amended to read:

3 231. (a) In criminal cases, if the offense charged is punishable
4 with death, or with imprisonment in the state prison for life, the
5 defendant is entitled to 20 and the people to 20 peremptory
6 challenges. Except as provided in subdivision (b), in a trial for any
7 other offense, the defendant is entitled to 10 and the state to 10
8 peremptory challenges. When two or more defendants are jointly
9 tried, their challenges shall be exercised jointly, but each defendant
10 shall also be entitled to five additional challenges which may be
11 exercised separately, and the people shall also be entitled to
12 additional challenges equal to the number of all the additional
13 separate challenges allowed the defendants.

14 (b) If the offense charged is punishable with a maximum term
15 of imprisonment of one year or less, the defendant is entitled to
16 five and the state to five peremptory challenges. When two or more
17 defendants are jointly tried, their challenges shall be exercised
18 jointly, but each defendant shall also be entitled to two additional
19 challenges which may be exercised separately, and the state shall
20 also be entitled to additional challenges equal to the number of all
21 the additional separate challenges allowed the defendants.

22 (c) In civil cases, each party shall be entitled to six peremptory
23 challenges. If there are more than two parties, the court shall, for
24 the purpose of allotting peremptory challenges, divide the parties
25 into two or more sides according to their respective interests in
26 the issues. Each side shall be entitled to eight peremptory
27 challenges. If there are several parties on a side, the court shall
28 divide the challenges among them as nearly equally as possible.
29 If there are more than two sides, the court shall grant such
30 additional peremptory challenges to a side as the interests of justice
31 may require; provided that the peremptory challenges of one side
32 shall not exceed the aggregate number of peremptory challenges
33 of all other sides. If any party on a side does not use his or her full
34 share of peremptory challenges, the unused challenges may be
35 used by the other party or parties on the same side.

1 (d) Peremptory challenges shall be taken or passed by the sides
2 alternately, commencing with the plaintiff or people; and each
3 party shall be entitled to have the panel full before exercising any
4 peremptory challenge. When each side passes consecutively, the
5 jury shall then be sworn, unless the court, for good cause, shall
6 otherwise order. The number of peremptory challenges remaining
7 with a side shall not be diminished by any passing of a peremptory
8 challenge.

9 (e) If all the parties on both sides pass consecutively, the jury
10 shall then be sworn, unless the court, for good cause, shall
11 otherwise order. The number of peremptory challenges remaining
12 with a side shall not be diminished by any passing of a peremptory
13 challenge.

14 (f) *This section shall remain in effect only until January 1, 2017,*
15 *and as of that date is repealed, unless a later enacted statute, that*
16 *is enacted before January 1, 2017, deletes or extends that date.*

17 SEC. 2. Section 231 is added to the Code of Civil Procedure,
18 to read:

19 231. (a) *In criminal cases, if the offense charged is punishable*
20 *with death, or with imprisonment in the state prison for life, the*
21 *defendant is entitled to 20 and the people to 20 peremptory*
22 *challenges. Except as provided in subdivision (b), in a trial for*
23 *any other offense, the defendant is entitled to 10 and the state to*
24 *10 peremptory challenges. When two or more defendants are jointly*
25 *tried, their challenges shall be exercised jointly, but each defendant*
26 *shall also be entitled to five additional challenges which may be*
27 *exercised separately, and the people shall also be entitled to*
28 *additional challenges equal to the number of all the additional*
29 *separate challenges allowed the defendants.*

30 (b) *If the offense charged is punishable with a maximum term*
31 *of imprisonment of 90 days or less, the defendant is entitled to six*
32 *and the state to six peremptory challenges. When two or more*
33 *defendants are jointly tried, their challenges shall be exercised*
34 *jointly, but each defendant shall also be entitled to four additional*
35 *challenges which may be exercised separately, and the state shall*
36 *also be entitled to additional challenges equal to the number of*
37 *all the additional separate challenges allowed the defendants.*

38 (c) *In civil cases, each party shall be entitled to six peremptory*
39 *challenges. If there are more than two parties, the court shall, for*
40 *the purpose of allotting peremptory challenges, divide the parties*

1 *into two or more sides according to their respective interests in*
2 *the issues. Each side shall be entitled to eight peremptory*
3 *challenges. If there are several parties on a side, the court shall*
4 *divide the challenges among them as nearly equally as possible.*
5 *If there are more than two sides, the court shall grant such*
6 *additional peremptory challenges to a side as the interests of justice*
7 *may require; provided that the peremptory challenges of one side*
8 *shall not exceed the aggregate number of peremptory challenges*
9 *of all other sides. If any party on a side does not use his or her full*
10 *share of peremptory challenges, the unused challenges may be*
11 *used by the other party or parties on the same side.*

12 *(d) Peremptory challenges shall be taken or passed by the sides*
13 *alternately, commencing with the plaintiff or people; and each*
14 *party shall be entitled to have the panel full before exercising any*
15 *peremptory challenge. When each side passes consecutively, the*
16 *jury shall then be sworn, unless the court, for good cause, shall*
17 *otherwise order. The number of peremptory challenges remaining*
18 *with a side shall not be diminished by any passing of a peremptory*
19 *challenge.*

20 *(e) If all the parties on both sides pass consecutively, the jury*
21 *shall then be sworn, unless the court, for good cause, shall*
22 *otherwise order. The number of peremptory challenges remaining*
23 *with a side shall not be diminished by any passing of a peremptory*
24 *challenge.*

25 *(f) This section shall become operative on January 1, 2017.*